

REMARKS

This is in response to the Office Action dated June 3, 2008. In the Office Action, the Examiner has imposed a requirement to elect one of the three groups of inventions and elect a single species (as set forth on pages 2-4 of the Office Action) for further examination of the above application.

Applicant hereby provisionally elects with traverse to further prosecute Group I claims (claims 22-25), and atherosclerosis/coronary heart disease, human and *Methylococcus capsulatus* as species.

In the Office Action, the Examiner averred that the inventions or groups I-III "are not so linked as to form a single general inventive concept under PCT Rule 13.1 . . . because, under PCT Rule 13.2, they lack the same or corresponding special technical features." The Examiner points to Johannessen et al., WO 01/60974, as teaching a food comprising a single cell protein. In support of the species election requirement, the Examiner seems to allege that the species of diseases, animals and bacteria, all lack unity because "the specie of atherosclerosis/coronary heart disease" and the "specie of human . . . [are] known in the art" in view of Ross et al., Nature 362:801-809, 1993, and the "specie of *Methylococcus capsulatus* is known in the art in view of Johannessen et al., WO 01/60974.

As a preliminary matter, Applicant respectfully submits the PCT Examiner has already found during the international proceedings of the above National Stage application that claims 1-21 (which substantially correspond to the present claims 22-43) fulfill the Unity of Invention requirement under PCT Rule 13.2 and Johannessen et al., WO 01/60974 was cited as a category "A" reference. The category "A" reference is a document that defines the general state of the art but it is not considered to be of particular relevance.

Notwithstanding, Applicant submits that the Johannessen et al., WO 01/60974 and Ross et al., references are not documents of particular relevance for these references do not teach or suggest a method of treating or preventing a disease involving a step of administering to an animal in need of such treatment, a pharmaceutical or nutritional composition comprising a single cell protein material. The Ross reference does not disclose the use of single cell material, and the Johannessen reference does not disclose treatment of diseases. Assuming for the argument sake that the Johannessen reference teaches a food comprising a single cell protein, it does not teach or suggest the claimed method of treating or preventing a disease. In the instant case, the claim preamble, "a method of treating or preventing a disease" sets forth the objective of the method, and the body of the claim directs

that the method be performed on someone “in need.” Thus, the preamble is a statement of the intentional purpose for which the method must be performed. See *Jansen v. Rexall Sundown*, 342 F.3d 1329 (Fed. Cir. 2003).

Further, the expression “special technical features” is defined as “those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.” PCT Rule 13.2. Applicant respectfully submits that the each of the claimed inventions recite a number of special technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. For example claim 22, in Group I, recites the purpose and step for which the method must be performed, which must be considered as a whole. The Examiner has not met this requirement. Mere conclusory allegation by the Examiner that the special technical feature has been taught by the prior art” is not believed sufficient to support the required restriction.

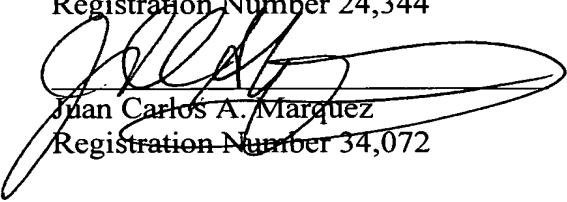
Applicant respectfully submits that the subject matter of the pending claims 22-43 are sufficiently related so that a thorough search for the subject matter of one group of claims would necessarily encompass a search for the other groups of claims. In addition, the Examiner has already searched prior art with respect to claims 1-21 in the corresponding PCT application, PCT/NO 2004/000204. Further, for example, Group I claims recite only a reasonable number of species. Thus, Applicant respectfully submits that there is no reason for insisting on the election of species and no undue burden on the Examiner.

It is further submitted that in view of the fees charged for filing of divisional patent applications, and prosecution and maintaining the resulting patents place an undue burden on the Applicant, which justifies that any restriction or election requirement be clearly supported and made according to the patent examining procedure. Applicant respectfully submits that the present restriction/election requirement is not in accordance with the patent examining procedure including 37 C.F.R. §§ 1.475 and 1.499.

CONCLUSION

Based upon the above remarks, Applicant respectfully requests reconsideration of this restriction requirement and early allowance of the pending claims. Should the Examiner believe that a telephone conference with Applicants' attorney would expedite prosecution of this application, the Examiner is urged to contact the undersigned attorney.

Stanley P. Fisher
Registration Number 24,344



Juan Carlos A. Marquez
Registration Number 34,072

Nanda P.B.A. Kumar
Registration Number 44,853

REED SMITH LLP
3110 Fairview Park Drive
Suite 1400
Falls Church, Virginia 22042
(703) 641-4200
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SPF/JCM/NK